IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 16018 of 2007

For Approval and Signature:

HONOURABLE MR.JUSTICE RAVI R.TRIPATHI

==========

1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

==========

HAMIDABEN AND OTHERS
Versus
ZUBEDABEN. W/O ABDULBHAI PIRABHAI ASU AND OTHERS

==========

Appearance :
MR SHIRISH JOSHI for the Petitioners.
MR SP MAJMUDAR for Respondent Nos.1 - 2,4 - 6.
RULE SERVED BY DS for Respondent Nos. 3,7 - 8.
MR JASWANT K SHAH, ASSTT GOVERNMENT PLEADER for Respondent No. 8

==========

CORAM : HONOURABLE MR.JUSTICE RAVI R.TRIPATHI

Date : 12/10/2007

ORAL JUDGMENT

1. With consent of the learned advocates for the parties, the matter is taken up for final disposal.

2. The petitioners are before this Court being aggrieved by judgment and order dated 20.12.2006 passed by the Secretary (Appeal) in Revision Application No.15 of 2006, whereby the Secretary (Appeal) was pleased to confirm order passed by Collector, Banaskantha in Revision Application No.4 of 2005 dated 15.04.2006.

3. The Collector, by order dated 15.04.2006, whereby order passed by the Deputy Collector in RTS Appeal No.53 of 2002 dated 29.09.2004 was quashed and set aside, had directed the Mamlatdar to act in accordance with law and make necessary entry on account of heir-ship as and when an application is given in that regard. This order is challenged by filing the present petition on 15.01.2007. Before the Court issued 'Rule' and notice as to interim relief and granted ad-interim relief in terms of para 28(C) on 02.07.2007, respondent Nos. 1 and 2 approached the Mamlatdar with a request to enter their name as heirs. The Mamlatdar passed an order on

09.03.2007 and their names were entered in revenue record on 21.3.2007.

4. Learned advocate Mr. S.P. Majmudar appearing for respondent Nos. 1,2,4,5, and 6 submitted that, now, that order dated 15.4.2006 of the Collector, which was confirmed by the Secretary (Appeal) is already implemented, and, therefore, there is no question of continuing the interim relief granted on 02.07.2007.

5. The facts of the case are that the petitioners are the heirs of Jivabhai Dadubhai Vagadia, being daughter-in-law and grandsons. The son of Shri Jivabhai Dadubhai Vagadia expired during his life time. The case of the petitioners is that Shri Jivabhai Dadubhai Vagadia made 'HIBA' (oral gift) under the Muslim Law on 25.03.1983 which was then transcribed on a four rupee stamp paper, a copy of which is produced at Annexure-'J' to the petition.

The case of the respondents represented by learned advocate Mr. Majmudar is that the said document is not valid and they have a right in the property of Shri Jivabhai Dadubhai Vagadia, being his daughters.

6. Taking into consideration this controversy between the parties and in light of the settled legal position that rights to the property are required to be established in a Civil Court of competent jurisdiction, wherein both the parties will have full opportunity to lead necessary oral and documentary evidence.

7. It is on record that in first round of litigation, the parties are before this Court and second round of litigation has also started as the order of Mamlatdar dated 09.03.2007 is under challenge before the Deputy Collector, which will be challenged by one of the party before the Collector then before the Secretary (Appeal) and then before this Court by way of a petition.

8. To see that both the parties do not unnecessarily go on litigating the matter, the matter is disposed of with the directions as under:

(i) The order of the Collector dated 15.04.2006 and order of the Secretary (Appeal) dated 20.12.2006, which are the subject matter of this petition, and order dated 09.03.2007 passed by the Mamlatdar, which is also challenged by amendment by the petitioners in this petition, are kept in abeyance, reserving the right of the petitioners to challenge them in future, if so required and advised.

(ii) The respondents represented by learned advocate Mr. Majmudar to approach the Civil Court to establish their rights which flow from their act of disowning

the 'HIBA' (oral gift), which is documented on 25.03.1983 and produced at Annexure-'J' to the petition.

(iii) The petitioners are directed to maintain status quo qua the property in question and the respondents are directed not to act upon the revenue record, wherein, by order dated 09.03.2007, their names are entered on 21.03.2007, so as to deal with the properties (subject matter of dispute) in any manner whatsoever.

(iv) The revenue authorities are directed to maintain the status quo qua the mutation entries with regard to the property in question till the outcome of the civil litigation between the parties.

9. It goes without saying that this arrangement will remain operative till the rights of the parties are finally adjudicated by a Civil Court

of competent jurisdiction.

10. With these directions, the petition is disposed of. Rule is discharged with no order as to costs.

(RAVI R. TRIPATHI, J.)

omkar